



December 4, 2001

Mr. David Timberger
Staff Attorney
General Law Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR2001-5637

Dear Mr. Timberger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155586.

The Texas Natural Resource Conservation Commission (the "commission") received a written request from a commission employee for certain information pertaining to the requestor and a former commission employee. You state that the commission has released most of the requested information to the requestor. You contend that other responsive information, which you have marked, is excepted from required public disclosure pursuant to section 552.107(1) of the Government Code.¹

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either client confidences to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a

¹Although you also seek to withhold the same information pursuant to section 552.101 of the Government Code in conjunction with Rule 503 of the Rules of the Texas Rules of Evidence, we note that in this instance, the protection afforded under section 552.107(1) and Rule 503 are co-extensive. Accordingly, we do not further address the applicability of Rule 503 to the records at issue.

governmental body's attorney. Open Records Decision No. 574 at 5 (1990). After reviewing the information you have marked, we agree that the commission may withhold most of that information pursuant to section 552.107(1). We have marked the records at issue accordingly. The commission must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Montgomery Meitler". The signature is fluid and cursive, with the first name "W." and last name "Meitler" being more distinct than the middle name "Montgomery".

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/sdk

Ref: ID# 155586

Enc: Marked documents